

ASSEMBLY BILL

No. 458

**Introduced by Assembly Member Cook
(Coauthor: Assembly Member Tom Berryhill)**

February 24, 2009

An act to amend Section 1324 of, and to repeal Section 1324.1 of, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 458, as introduced, Cook. Criminal procedure: witness testimony.

Existing law provides that in any felony proceeding or in any investigation or proceeding before a grand jury for any felony offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated thereby, there is a procedure for the court to compel the testimony or production of evidence.

This bill would extend these provisions to any criminal proceeding.

Existing law provides that in any misdemeanor proceeding in any court, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, the person may agree in writing to testify voluntarily, as specified.

This bill would repeal those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1324 of the Penal Code is amended to
2 read:

1 1324. In any ~~felony~~ *criminal* proceeding or in any investigation
2 or proceeding before a grand jury for any ~~felony~~ *criminal* offense
3 if a person refuses to answer a question or produce evidence of
4 any other kind on the ground that he or she may be incriminated
5 thereby, and if the district attorney of the county or any other
6 prosecuting agency in writing requests the court, in and for that
7 county, to order that person to answer the question or produce the
8 evidence, a judge shall set a time for hearing and order the person
9 to appear before the court and show cause, if any, why the question
10 should not be answered or the evidence produced, and the court
11 shall order the question answered or the evidence produced unless
12 it finds that to do so would be clearly contrary to the public interest,
13 or could subject the witness to a criminal prosecution in another
14 jurisdiction, and that person shall comply with the order. After
15 complying, and if, but for this section, he or she would have been
16 privileged to withhold the answer given or the evidence produced
17 by him or her, no testimony or other information compelled under
18 the order or any information directly or indirectly derived from
19 the testimony or other information may be used against the witness
20 in any criminal case. But he or she may nevertheless be prosecuted
21 or subjected to penalty or forfeiture for any perjury, false swearing
22 or contempt committed in answering, or failing to answer, or in
23 producing, or failing to produce, evidence in accordance with the
24 order. Nothing in this section shall prohibit the district attorney or
25 any other prosecuting agency from requesting an order granting
26 use immunity or transactional immunity to a witness compelled
27 to give testimony or produce evidence.

28 SEC. 2. Section 1324.1 of the Penal Code is repealed.

29 ~~1324.1. In any misdemeanor proceeding in any court, if a~~
30 ~~person refuses to answer a question or produce evidence of any~~
31 ~~other kind on the ground that he may be incriminated thereby, the~~
32 ~~person may agree in writing with the district attorney of the county,~~
33 ~~or the prosecuting attorney of a city, as the case may be, to testify~~
34 ~~voluntarily pursuant to this section. Upon written request of such~~
35 ~~district attorney, or prosecuting attorney, the court having~~
36 ~~jurisdiction of the proceeding shall approve such written agreement,~~
37 ~~unless the court finds that to do so would be clearly contrary to~~
38 ~~the public interest. If, after court approval of such agreement, and~~
39 ~~if, but for this section, the person would have been privileged to~~
40 ~~withhold the answer given or the evidence produced by him, that~~

1 person shall not be prosecuted or subjected to penalty or forfeiture
2 for or on account of any fact or act concerning which, in accordance
3 with such agreement, he answered or produced evidence, but he
4 may, nevertheless, be prosecuted or subjected to penalty or
5 forfeiture for any perjury, false swearing or contempt committed
6 in answering or in producing evidence in accordance with such
7 agreement. If such person fails to give any answer or to produce
8 any evidence in accordance with such agreement, that person shall
9 be prosecuted or subjected to penalty or forfeiture in the same
10 manner and to the same extent as he would be prosecuted or
11 subjected to penalty or forfeiture but for this section.

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